HOUSE OF ASSEMBLY

NEWFOUNDLAND AND LABRADOR

ANNUAL REPORT

OF

THE COMMISSIONER OF MEMBERS' INTERESTS

1994-95

103-04026/

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COMMISSIONER OF MEMBERS' INTERESTS
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May 5, 1995

Honourable Paul Dicks, Q.C.
Speaker
House of Assembly
Main Floor, East Block
Confederation Building
St. John's, NF
A1B 4J6

Dear Speaker:

I present the **1994-95 Annual Report of the Commissioner of Members' Interests** for tabling in the House of Assembly pursuant to Section 35 of the House of Assembly Act.

A copy of this Report will be forwarded to the Legislative Librarian for future reference by Members of the House of Assembly. Also, this Report will be given to the Queens Printer to respond to public requests for reproduction.

Yours sincerely,

D. Wayne Mitchell

D. Wayne Mitchell
COMMISSIONER

INTRODUCTION

This is my second Annual Report to the House of Assembly on the compliance of Members and their families with legislated conflict of interest standards. The Report covers activities from April 1, 1994 to March 31, 1995.

There have not been any requests referred to this Office during the year for an inquiry under Section 42 of the Act. Also, there have been relatively few matters referred by individual Members for advice from the Commissioner. The interaction with Members was concentrated for the most part on annual filings of private interests.

Aside from isolated pockets of discontent about the intrusion of conflict of interest legislation into personal privacy of Members and their families and occasional lapses by a few Members in meeting reporting deadlines, this Office has received substantial co-operation from all Members of the House of Assembly. It would appear from the material available to this Office that Members of the House of Assembly are placing public interest ahead of personal considerations.

LEGISLATIVE AMENDMENTS

The first Annual Report of the Commissioner of Members' Interests that was tabled on April 25, 1994 identified various legislative provisions which are inadequate or ambiguous to cover specific conflict of interest situations. Specifically, the House of Assembly was asked to address the following matters:

1) Should "public competitions" conducted by the Public Service Commission be explicitly referenced together with "public tender" as exclusions from Ministerial post employment waivers under Section 30?

2) Should a dual waiver be required for the granting Minister and the former Minister to be involved in post employment contracts or benefits under Sections 31 and 32?

3) Is it appropriate for the Commissioner of Members' Interests to also serve in another statutory post of Chief Electoral Officer with the House of Assembly?

4) Can commonly accepted financial reports be filed instead of audited financial statements to fulfill Section 36 obligations?

5) Are situations of incomplete disclosure of private interests by Members on behalf of their spouses adequately covered under Section 36?

6) Is privileged disclosure of private interests to the Commissioner protected in relation to Criminal Code proceedings under Section 41?

A Select Committee of the House of Assembly was established to deal with the first Annual Report. As at the date of printing this second Annual Report, the Select Committee has not reported to the House of Assembly on the legislative issues previously raised. Fortunately, there have not been any specific situations throughout the year where action has had to be taken under the legislative provisions identified in the previous Report.

ANNUAL DISCLOSURE OF PRIVATE INTERESTS

The examination of the annual disclosure statements of all fifty-two Members of the House of Assembly for 1994-95 was completed within three months of filing. Contact was made with each Member before June 30, 1994 with regard to their compliance under the Act. Updated Public Disclosure Statements were finalized and placed on the Public Register of this Office over the summer to reflect changes in private interests from the initial filing in August, 1993 to the annual filing for 1994-95.

The only area of non-compliance that surfaced from reviewing Members' Annual Disclosure Statements related to the failure of one Member to report the source of funding for a substantial acquisition of personal property after the initial filing in August 1993 as required under Section 36(4). The non-reporting constitutes a breach of the material change reporting provisions. The Member was advised to be more vigilant in reporting material changes in future but no further action was taken as the failure to report the material change in question did not pose a conflict of interest.

The position advocated in the 1993-94 Annual Report that unaudited financial reports are acceptable in complying with the financial reporting obligations under Section 36 was adopted again in 1994-95. This broad interpretation was also applied in accepting financial reports prepared by one Member for an inactive Company in which that Member is sole owner. It has been indicated that these financial reports, which do not bear an accountant's certification, are acceptable for Revenue Canada and other Company reporting purposes. Therefore, additional demands were not made for certified financial reporting for conflict of interest purposes.

The annual disclosures of private interest for 1994-95 continue to show that several Members or their families have not fully paid income taxes for prior years. Members have been advised to make every effort to settle income taxes given that outstanding balances are partially owed to the Provincial Treasury from which they are paid. The Members in question are required to confirm as part of their annual filing that arrangements are in place satisfactory to Revenue Canada for payment of prior years' income tax assessment.

The 1995-96 annual disclosures of private interests were due to be filed by March 31, 1995. Thirty-nine Members met the filing deadline. Another ten private interest forms were received within several days thereafter. The Member for Bellevue filed April 12, 1995. The Member for Fogo filed April 13, 1995. The Member for Kilbride filed April 26, 1995.

OPINION ON A SPOUSE RECEIVING FEDERAL-PROVINCIAL AGREEMENT BENEFITS

Early in the year a Member sought advice on whether the spouse was eligible to receive a financial grant and travel assistance under the Canada/Newfoundland Agri-Food Development Subsidiary Agreement.

This was considered acceptable under conflict of interest legislation as the granting Agency verified that the spouse met objective criteria for assistance that are applied to all applicants.

MINISTERIAL DISCLOSURE OF PRIVATE INTERESTS

On August 26, 1994 Cabinet changes were announced whereby: five Members of the House of Assembly became Ministers, four Ministers assumed new responsibilities, and five Ministers left Cabinet. The new Ministers were required under Section 36(1) of the Act to disclose private interests within sixty days of their appointment. In addition, the 1994-95 annual disclosures of private interest from Ministers whose responsibilities changed in August, 1994, were re-examined in the light of their new Departmental mandates.

Each of the new Ministers, except the Minister of Fisheries, Food and Agriculture, met the October 25, 1994 filing deadline. The Minister of Fisheries, Food and Agriculture breached Section 36(1) obligations by not filing a statement of private interests until November 14, 1994 but since this material was ultimately made available no further action was taken.

The examination of Ministers' private interests disclosure was completed and advice offered on compliance under the Act throughout the Fall of 1994. Updated Public Disclosure Statements were placed on the Public Register of this Office to reflect changes from the 1994-95 annual filing wherever these occurred for new Ministers appointed in August 1994.

REVIEW OF LEGISLATIVE ADVISORS' PRIVATE INTERESTS

On October 14, 1994 an announcement was made by the Premier respecting the appointment of several Members of the Liberal Caucus as Legislative Advisors to assist certain Ministers in policy development and with various Departmental duties. The private interests on file with this Office of the Members for: Lewisporte; Fortune-Hermitage; Bellevue; LaPoile; and Mount Scio-Bell Island were reviewed in the context of their direct association with assigned Government Departments. Based on this review there did not appear to be any conflict between private interests reported of the Members in question and their new roles in assisting Ministers.

SPOUSAL COMPLIANCE WITH REPORTING OBLIGATIONS

The situation was referenced in the Annual Report for 1993-94 of the spouse of the Member for Humber East refusing to disclose private interests. This resulted in incomplete disclosure as the Member only reported private interests to the best of her knowledge both for the initial filing period in August 1993 and the annual filing for 1994-95.

On February 6, 1995 private interests disclosure forms were completed by the spouse of the Member for Humber East and financial statements were submitted. This satisfied Section 36(3) disclosure requirements.

PUBLIC ACCESS TO INFORMATION ON CONFLICT OF INTEREST

The Office of Commissioner of Members' Interests did not receive any enquiries from the public on conflict of interest during the year. A few requests were received from the media for information on conflict of interest legislation and to view Public Disclosure Statements of Members.

Work was completed toward the end of the year on cataloging information pertaining to conflict of interest on the Provincial scene as well as developments in this field elsewhere. The public may visit the Office of the Chief Electoral Officer at 39 Hallett Crescent during normal business hours to view conflict of interest materials in space that has been specifically designated for this purpose.

CANADIAN CONFLICT OF INTEREST NETWORK

Legislated standards on conflict of interest for elected officials exist in most other jurisdictions of Canada. These are summarized in an annual publication prepared by the Office of the Ethics Counsellor for Canada titled "Conflict of Interest in Canada-Comparative Tables, 1994".

Although the statutory provisions may differ, the conflict of interest situations that arise from time to time have relevance in all parts of the Country. Therefore, there is a valuable exchange of information among Commissioners across Canada on individual decisions rendered. Also, the Canadian Commissioners meet once a year to share experiences and exchange views. The Ethics Counsellor for Canada hosted the 1994 annual meeting in Ottawa on October 14, 1994.

COMMISSIONER RESOURCING

Once again in 1994-95 approximately fourteen weeks were devoted to the functions of Commissioner of Members' Interests. This effort was largely attributable to annual filing activities as there were no inquiries or major referrals in the year.

The budget for the Commissioner of Members' Interests is included under the Electoral Office Estimates of the Legislature for 1995-96. The appropriations that total approximately $40,000 are for: professional services; printing; travel; furnishings and equipment. There are no salaries provided.

ACKNOWLEDGEMENTS

Mr. Michael Harrington, Q.C. of Stewart, McKelvey, Stirling, Scales Law Firm in St. John's continued to provide excellent legal service to the Commissioner on various conflict of interest issues throughout 1994-95.

The Internal Economy Commission of the House of Assembly has directed that proposals be called for external Legal Counsel to the Commissioner of Members' Interests in line with Government policy on legal services. Arrangements will be made to carry out this directive of the Internal Economy Commission following submission of this Annual Report. This process will be completed as soon as possible thereafter so as to minimize uncertainty in the provision of legal input to the Commissioner for 1995-96.

The extra work of Ms. Janet Lewis, Secretary to the Chief Electoral Officer is also acknowledged in providing administrative support to the Commissioner of Members' Interests throughout 1994-95.